



Months
Late;
Millions
Wasted

November 30

2015

Delays in Releasing Women on Parole

In Fiscal Year 2014

Executive Summary

She arrived at New Mexico Women's Correctional Facility (NMWCF) to serve 132 days in prison. For reasons that were never explained, her file was held at Offender Management Services (OMS) for five months before being sent to the NMWCF. As a result, she was not able to begin planning for parole until more than two weeks *after* the date she should have been released on parole. She was not actually released from NMWCF until she completed her parole period in prison and was discharged with no supportive services. Her sentence was fully served in 132 days, but she spent 184 days in prison *after* she should have been released on parole.

Since 2007, hundreds of New Mexicans have languished in prison after serving their time, simply because their release on parole was delayed.¹ In Fiscal Year 2014, the Legislative Finance Committee (LFC) estimated there were 290 inmates whose release on parole was delayed, at a cost to the state of \$10.3 million dollars.² The New Mexico Corrections Department (Corrections Department or the Department) reported to the LFC that 78.2% of female offenders “were successfully released in accordance with their scheduled release dates.”³

In FY 2014, the only prison for women was New Mexico Women's Correctional Facility (NMWCF), a private, for-profit prison owned by Corrections Corporation of America (CCA). CCA's pay was based on a set amount for each woman for each day she was in prison, whether she was serving her prison sentence or was on in-house parole.

This report is based on a review of records obtained from the New Mexico Corrections Department and the New Mexico Adult Parole Board pursuant to the Inspection of Public Records Act. Attention was focused on the release of women on parole during Fiscal Year (FY) 2014, which began July 1, 2013, and ran through June 30, 2014.

This study found that in FY 2014, 438 women were released on parole. Only 207 of them, or 47.2%, were released on the date their parole began. The other 231, or 52.7%, spent additional time in prison on what has been referred to as “in-house parole” (IHP). These women are referred to as “the IHP women.” Collectively, those women spent an additional 28,982 days in prison, at an estimated cost to the state of \$2,898,200.00. In light of this, it seems likely that the overall number of inmates serving In-House Parole is much greater than previously believed.

Demographically, roughly seventy-five percent of them were women of color. Many of them were convicted of more than one offense. This study focused on the type of offenses committed by these women. Considering all the offenses, drug and alcohol offenses accounted for 35% of the total, property crimes were second with 30%, and violent crimes accounted for 21.4% of the offenses. The rest were public order violations or other, miscellaneous violations. While only a

few women were classified as suffering from a serious mental illness, it is well known that 70% of the women at NMWCF are on psychotropic drugs.

The Corrections Department's written policy requires that parole planning begin 210 days before the end of the prison term.⁴ During FY 2014, only 3.6% of the IHP women began parole planning "on time." During FY 2014, there was only one CCA employee who worked directly with inmates in the elaborate process of finding an "approvable" residence and other services provided during parole. The Corrections Department apparently agreed with this staffing plan.

The Department's timeline anticipates that the New Mexico Adult Parole Board (Parole Board) will approve the offender's parole plan at least 90 days before the end of the prison term. Only 11.1% of the IHP women had a timely parole hearing by that standard. In fact, more than half of the IHP women had their first parole hearing while they were already on in-house parole. For some women, a second hearing was necessary before their parole plan was approved.

The sad truth is that incarceration does not deter many offenders from criminal activity after prison. New Mexico's three year recidivism rate was 47% for FY 2014.⁵ For the women released in calendar year 2009, the four year recidivism rate was 67%.⁶ Those who committed drug crimes had the highest rate of recidivism.⁷

If the Legislature wants to reduce the recidivism of women, it might want to examine the possibility of treating addiction and mental illness as public health issues, so that women suffering from one or both these conditions are not constantly in and out of the jails and prisons of New Mexico. Prisons should be for violent offenders, not for those in need of treatment and supportive services.

What is Parole and How is it Different From Probation?

It is easy to confuse parole and probation. They are alike in many ways. In both cases, the offender is supervised by a Parole and Probation Officer (PPO) employed by the New Mexico Corrections Department. However, probation is far more common than parole. During FY 2014, there were a total of 15,724 people on probation statewide, but only 1,399 people on parole.⁸

Probation is imposed by a judge after someone is convicted of a crime. At sentencing, the judge announces the amount of time the offender will be incarcerated and the amount of time the offender will be on parole. In many cases, after imposing the sentence, the judge will suspend some of the years of incarceration and put the person on probation for that time. If the person violates probation, the matter comes back to the judge, who decides whether to keep the person on probation, perhaps with different conditions, or to send the person to prison to serve some or all of the suspended sentence.

Parole is different. By statute, the judge is required to sentence anyone convicted of a felony to one or two years of parole, longer if the person is a convicted sex offender.⁹ Other statutes require an approved parole plan before an inmate is released on parole.¹⁰ However, apart from the initial imposition of sentence, release on parole is entirely controlled by the New Mexico Corrections

Department (NMCD, or the Corrections Department) and the New Mexico Adult Parole Board (the Parole Board).

Many inmates released on parole are also on probation when released. This is referred to as dual supervision.

Background

For years, under the administrations of both former Governor Bill Richardson and present Governor Susana Martinez, there have been substantial delays in releasing prisoners on parole. This practice was criticized by the Legislative Finance Committee as long ago as 2007, when the average stay was 86 days after the sentence was completed and the number of inmates on IHP was 173, costing the state \$81.35/day per inmate, so the total cost was 1.2 million.¹¹ By 2012, there were 278 inmates on IHP and it was costing the state an estimated \$10 million a year.¹² Women were less than 10% of the prison population, but accounted for 12.4% of the people on IHP.

Delays in releasing inmates on parole create multiple problems. While the release of inmates in both public and private prisons has been delayed, the effect is magnified at the private prisons, which are paid for each day a person is in the facility. This, in effect, gave private, for-profit institutions a financial incentive to delay inmate releases.

Delayed release has a significant impact on families. Many of these inmates are mothers and fathers; delays in releasing them force them to be away from their children for more time than necessary and makes family reunification more difficult. The family of the offender faces significant burdens, financial and emotional.¹³

Most importantly, it also deprives the inmate of time and support needed to adjust to life outside of prison. These delays affect both male and female prisoners; however, more women than men spend time in what has been referred to as “in-house parole,” abbreviated as IHP. During this study, the New Mexico Corrections Department abandoned that label in favor of “release-eligible inmates,” abbreviated as REI.

In FY 2014, there was one prison in New Mexico for women, the New Mexico Women’s Correctional Facility (NMWCF).¹⁴ This facility was built and operated by Corrections Corporation of America (CCA), a multi-billion dollar, publically traded Real Estate Investment Trust, under a contract with the Corrections Department. The prison is located in Grants, New Mexico. CCA is paid on a per diem basis; every day a woman is in prison, CCA is paid additional money, whether the woman is serving her sentence or in-house parole. As we shall see, during fiscal year 2014, there were a total of 231 women whose release on parole was delayed, at a cost to taxpayers of slightly less than \$3 million.

Methodology

This report is based on analysis of information obtained from the New Mexico Corrections Department (NMCD or the Corrections Department) and the New Mexico Adult Parole Board (the Parole Board) pursuant to the Inspection of Public Records Act.¹⁵ It is particularly based on the In-House Parole (IHP) Breakdown Analysis (IHP reports) prepared periodically by an employee at NMWCF during FY 2014. Because an inmate only appears on an IHP report when she has fully served her prison term, the amount of information provided varied. For some women, the information included the date planning began though the date the woman was released on parole. For others, there was information only about what happened after the woman had fully served the incarceration portion of the sentence. Accordingly, the number of women for whom there was information is included in each section.

Most of the information in this report came from the Corrections Department or the Parole Board. This report would not have been possible without their help. The Corrections Department in particular devoted substantial amounts of time and resources to providing the information, even providing information it did not believe it was legally required to provide under the Inspection of Public Records Act. We appreciate the time and effort put into this project by their employees.

The New Mexico Sentencing Commission lent its expertise in the system it uses to classify types of crimes.

This report is organized into four sections. Section 1 provides information about the 231 women whose release on parole was delayed during FY 2014. Section 2 discusses the parole process, from the first discussion to the hoped-for release on parole for those so fortunate. The Corrections Department has a policy that provides a timeline for release on parole. Particular attention was focused on whether those standards were met. Section 3 discusses the growth in incarceration and the high recidivism rate. Section 4 provides recommendations.

Section I.

The “IHP Women”

According to the Corrections Department’s FY 2014 program evaluation issued by the Legislative Finance Committee, 78.2% of female offenders were released “in accordance with their scheduled release dates.”¹⁶ It is not clear precisely what is meant by “scheduled release date.” The Department attributed the delays in releasing inmates to a lack of community resources for parolees, administrative issues causing parole hearings to be canceled, and inmates not participating in the parole process.¹⁷ Review of the IHP breakdown reports raises serious questions about how this figure was reached, as well as the reasons for the delays.

There were a total of 231 women whose release on parole was delayed during Fiscal Year 2014. Roughly 75% of them were women of color.¹⁸ As a group, these women are referred to as “the IHP women.” To put this in context, a total of 438 women were released on parole during FY 2014. In other words, the release of 52.7% of the women released on parole was delayed during FY 2014. In addition, there were 90 women discharged from all further supervision. If one includes those 90 women, the percentage whose release was delayed drops to 44.0%.

The Corrections Department also attributes delays to inmates who refuse to participate in the parole process. Of the 231 women whose parole was delayed, only 5 women (2.2%) refused to participate in the process. Another 11 (4.8%) had their good time stopped for some period of time while on in-house parole because they were unable to provide an address to which they wished to parole. In other words, during FY 2014 only 6.9 % of the REI women refused to participate in the parole process.

The IHP reports included the offenses for which the woman was imprisoned. The New Mexico Sentencing Commission breaks criminal offenses into five broad categories: 1) violent crimes, 2) property crimes, 3) drug crimes, 4), public order crimes, and 5) other crimes. Driving while intoxicated is a public order crime. These categories were modified for this study by making driving while intoxicated

a separate category so that the number of convictions involving substance abuse would be apparent.

The 231 women were convicted to a multitude of offenses. Each offense or group of offenses was assigned to one of the categories above. For example, if a woman was convicted of one drug offense, it was counted as a drug offense. If she was convicted of multiple counts of drug offenses, it was considered a drug offense and counted only once. If a woman was convicted of a drug offense, a violent offense, and a public order offense, all three categories were counted. The total for purposes of calculating percentages is 304. This is how it breaks down:

| Type of Offense | # IHP women | % of offenses by IHP women |
|---------------------------|--------------------|-----------------------------------|
| Violent | 66 | 21.7% |
| Property | 93 | 30.6% |
| Drug | 88 | 29.0% |
| DWI | 17 | 5.6% |
| Other Public Order | 34 | 11.1% |
| Other | 6 | 2.0% |

Collectively, issues of addiction to alcohol or drugs lead the list at a combined 34.6% of the crimes for which the IHP women were incarcerated. The next largest number is property crimes, with 30.6%. It is common knowledge that many people commit property crimes in order to obtain money to support an addiction. If that is the case, 65.2% of the IHP women were incarcerated for

substance abuse and related crimes. Drugs and alcohol are also frequently involved in other crimes, particularly violent crimes.

In addition, it is important to remember that the female prison population is very different from the male prison population. If there is one word that describes most of the women in prison, that word is “abused.” A 2010 study of women incarcerated in NMWCF provides details.¹⁹ As children, more than half of them (54%) had suffered psychological abuse or neglect. Slightly less than half were physically abused (48%) or grew up in an atmosphere of family violence (45%). Seventy-one percent (71%) grew up in a household in which someone had a substance abuse problem.

The problems did not end with childhood. Almost 9 out of 10 were physically abused at some time in their lives. More than two thirds of them (67%) were sexually assaulted at some time in their lives. In fact, New Mexico’s incarcerated women reported more psychological, physical and sexual abuse than the incarcerated women in a study done in California.²⁰

All of this has implications for the mental health of women in prison. The IHP reports referred to at least three women with serious mental illnesses who served lengthy amounts of time on in-house parole. The longest period of time was two years and eight months. Apart from those 3 women, the IHP reports do

not provide information about mental health issues, if any, of the women whose release on parole was delayed. However, we do know a few things.

Overall, roughly 20% of New Mexicans 18 and older have a mental illness, and slightly more than 4% have a serious mental illness.²¹ For years, the Metropolitan Detention Center in Albuquerque has been referred to as the “largest mental health facility in New Mexico.” Similarly, the Albuquerque Journal disclosed that 70% of the women imprisoned in New Mexico are on psychotropic drugs.²²

In fact, a recent study by the Treatment Advocacy Center found that there are now more than three times more seriously mentally ill persons in jails and prisons than in hospitals. Moreover, the number of hospital beds for the seriously mentally ill has declined dramatically. In 1955, there was one psychiatric bed for every 300 Americans. In 2005, there was one psychiatric bed for every 3000 Americans. Most of those beds were occupied by court-ordered patients.²³

As the Treatment Advocacy Center points out:

In historical perspective, we have returned to the early nineteenth century, when mentally ill persons filled our jails and prisons. At that time, a reform movement, sparked by Dorothea Dix, led to a more humane treatment of mentally ill persons. For over a hundred years, mentally ill individuals were treated in hospitals. We have now returned to the conditions of the 1840s by putting large numbers of mentally ill persons back into jails and prisons.

In short, the path to prison for many women is simple. It begins with physical or sexual or psychological abuse. The abuse traumatizes the woman, who then uses alcohol or drugs to kill the pain. This leads to encounters with the police and, if the cycle is not stopped, leads to incarceration.²⁴

Section 2. Delays in Release on Parole

In New Mexico, 96% of the people sent to prison are eventually released back into the community.²⁵ Those people face a large number of civil disabilities and restrictions on their behavior for the rest of their lives, referred to by lawyers as “collateral consequences.”²⁶ Unfortunately, 47% of those released will be incarcerated again within the next three years.²⁷

Most people think of a sentence as the amount of time the offender must spend in prison. This is set by statute passed by the Legislature.²⁸ However, a criminal sentence also includes a variety of other terms and conditions. Two are important for this study. One is the number of years, one or two, the person will spend on parole after prison, which is also set by statute.²⁹ (For sex offenders, the time on parole is longer.³⁰)

Additionally, some people cannot make bail and spend months in jail while the case is resolved. In such a situation, the person gets credit against the prison sentence for every day of the time in jail (pre-confinement credit).³¹ In other words, if the person was in jail for six months while the case was resolved, six

months of the prison sentence will be deemed already served. A total of 29 of the women whose release was delayed, or 12.6% of the IHP women, had less than one year to serve when they arrived at NMWCF.

There are two state agencies involved in the process of releasing inmates on parole: the Corrections Department and the Parole Board. The Parole Board is appointed by the Governor and is independent of the NMCD. All the other people involved in the parole process are employees of NMCD, or of its contractors. In particular, NMCD employees or contractors are responsible for starting the process and moving it along.

The process of going from prison to release on parole is lengthy and complex. There are three phases: 1) finding an “approvable” residence for the parolee; 2) the Parole Board hearing; and 3) post-hearing procedures. NMCD Policy “Reentry Planning and Transition Process for Inmates Releasing to Community from Incarceration” provides a timetable for creating and processing parole plans.³² Note that the Projected Release Date referred to below is the same date as the date the inmate begins serving in-house parole (IHP date).

210 days before the projected release date: classification officer should begin discussing prospective residences with the inmate

180 days before the IHP date – Reentry Committee holds a meeting that inmate attends. The Progress Report/Reentry Plan is finalized, the parole plan packet is prepared and reviewed by supervisors

120 days before the end of the prison term – Parole Board Docket form is submitted to the Adult Parole Board at least 30 days before the hearing date

90 days before the end of the prison term – inmate appears at the Parole Board.

Parole Board regulations also require that the parole hearing take place at least 90 days before the inmate’s release on parole, longer if the inmate is seeking an out-of-state placement.³³

Our own research confirms that the time frame reflects an accurate understanding of the amount of time the process takes from start to finish. If the Department had followed its own policy, there would have been relatively few women whose release on parole was delayed. However, as we shall see, the IHP reports show the policy was completely ignored.

Finding an “Approvable” Residence

The IHP reports showed the date of the first parole discussion for 167 women. Fewer than 4% of the IHP women had that first discussion 210 or more days before their IHP date. (The percentage meeting the standard is highlighted in yellow throughout this section.) In fact, 20.3% of the IHP women did not even have their first discussion until on or *after* the woman’s prison term was fully served. The average time the discussion began for the IHP women was only 79.5 days before the end of the prison term.

| Days before or (after) IHP | % of 167 women |
|-----------------------------------|-----------------------|
| 210 days or more | 3.6% |
| 209 to 181 | 4.2% |
| 180 to 91 | 45.0% |
| 90 to 1 | 27.0% |
| 0 | 3.0% |
| (-1 to -89) | (13.2%) |
| (Greater than -90) | (4.2%) |

The most time-consuming part of the parole process is finding a place for the parolee to live that will be approved by the Parole Board. This process begins at the facility in which the inmate is housed, when the caseworker assisting the inmate asks the inmate to provide the names and addresses of one or two people who will allow the parolee to live with him or her. The caseworker may call the sponsor to find out if the sponsor is willing to have the parolee live there. The names and addresses are then sent to the local Probation and Parole Office, which conducts an investigation and either approves or denies the proposed sponsor. If the sponsor is denied, the caseworker asks the inmate to provide additional names and addresses and the cycle repeats. Once the inmate runs out of individual names and addresses, the inmate must start applying to programs in order to keep receiving good time.

Finding an “approvable” residence takes a long time in part because the proposed residence must be inspected and approved by someone from the Probation and Parole Office nearest the residence. The PPO is particularly

concerned if there are prescribed medications, drugs, alcohol, guns or other deadly weapons in the home. In addition, the host must be willing to agree to warrantless searches of the premises. HUD regulations prohibit convicted felons from residing in HUD housing, so family members living in federally subsidized housing cannot host a family member who is on parole. In addition, convicted sex offenders cannot live with children, even their own children. Finally, the PPO is expected to assess whether a return to the community in which the woman lived before she was incarcerated would have “adverse effects” on her or the community.³⁴ During FY 2014, PPOs performed 4,690 parole investigations.

If there is no family member or close friend willing to open their home to the prospective parolee, the woman must apply to a residential program. This involves filling out an application, having an interview with a representative of the program, and then waiting for the program to make a decision. In one case, a residential program needed five months to make a decision. Most programs, including that one in other instances, decide more quickly than that. Once an inmate is accepted, she may be placed on a waiting list. One woman waited over three months for a bed to become available.

The few programs available sometimes have waiting lists. Many of them require an up-front payment and charge rent. Some are affiliated with religious organizations with mandatory bible study & participation in church related

activities. Some are sober living facilities. Few allow women to have their children reside with them. One women's program was closed in 2014 because they were assigned to work at a place where they said they were "harrassed, subjected to lewd conduct and inappropriately touched. . ."35

The Parole Hearing

Scheduling a date for a parole hearing is not a simple process. The written proposed docket must reach the Parole Board at least 30 days before the scheduled hearing, so that the Parole Board can notify the victim of the crime as required by statute.³⁶ In addition, the Parole Board checks to make sure that all the necessary reports are included in the packet for that inmate. If anything is missing, even one document, it will be "scratched" from the docket. That means the case will not be heard at that time and the paperwork associated with the case is returned to NMWCF, where the caseworker must find the missing document. In the worst case encountered, the hearing was scratched for three consecutive months before the caseworker realized that the Parole Board was correct and there was no police report in the file.

In FY 2014, the Corrections Department stated that one of the reasons for delay was "administrative issues causing parole hearings to be canceled . . ."37 This seems to be a reference to the problem of what the Parole Board refers to as "scratched hearings." In FY 2014, there were 517 cases sent to the Parole Board,

but only 20% of those hearings were scratched. However, it is the caseworker in each facility who is responsible for assembling all the documents the Parole Board needs.

Parole hearings are governed by NMAC § 22.510.2.8(A). Legal counsel is not permitted. Visitors are allowed only with the consent of the chair and other board members. The Board usually sit in panels of two; it takes only two members to grant, deny, or revoke parole, or to set parole conditions or approve a parole plan.³⁸ In spite of that, this review uncovered at least two cases in which the chair vetoed a parole plan approved by two board members. We were unable to find anything in the regulations giving the Chair this power.

Both the Department and the Parole Board expect the parole hearing to occur at least 90 days before the end of the prison term. Only 11.1% of the IHP women had a timely hearing by that standard. Given the late start to the planning, it is probably not a surprise that many parole hearings occurred after the prison term was fully served. In fact, only 46.6% of the parole hearings were held before the prison term expired, while 53.4% were held while the woman was already on in-house parole. This is simply the inevitable consequence of delaying the beginning of the planning and the length of time it takes to find an “approvable” residence.

| Number of Days Before or (after) IHP for 1st parole hearing | % of 189 women |
|---|-----------------------|
| 90 or more days before | 11.1% |
| 1 – 89 days before | 35.4% |
| 0 | 1.1% |
| (-1 to -90 after IHP) | (44.0%) |
| (-91 to -210 after IHP) | (4.8%) |
| More than -210 | (3.7%) |

Post-Hearing Procedures

The Parole Board has an internal standard requiring parole certificates to be issued in 10 working days. Assuming at least one and possibly two weekends were involved, parole certificates are timely if issued within 14 days of the date the parole plan was approved. There were 82 IHP women for whom we had both the date of the hearing and the date the certificate was issued. Less than a quarter of the parole certificates, 23.2%, were timely. In fact, more certificates were issued more than a month after the parole plan was approved, 28%. The average time was 31.6 days after the Parole Board approved the plan.

| Days to issue Parole Certificates | % Issued in that time |
|--|------------------------------|
| 14 days or less | 23.1% |
| 15-21 days | 30.4% |
| 22-28 days | 18.2% |
| More than 28 days | 28.0% |

Once the caseworker at the prison receives the parole certificate, the file is sent to Offender Management Services (OMS). In most cases, this happened in fewer than 10 days. However, there were three instances of much longer times: 283 days, 103 days and 53 days. The Office of Offender Management Services is responsible for a final check to make sure that the prison term has been fully served. This includes checking the calculation of good time. Once that is complete, OMS schedules the date of release.

There were 100 women whose information included both the date the file was sent to OMS and the woman's release date.

| #Days at OMS | For 100 women |
|--------------|---------------|
| 1 - 10 days | 45% |
| 11 - 20 days | 22% |
| 21 - 30 | 10% |
| 31 - 60 | 16% |
| More than 60 | 7% |

Time Spent on In-House Parole

Both the IHP date and the release date were available for 223 of the 231 IHP women. Collectively, those women spent an additional 28,982 days in prison while awaiting parole. This is an average of 130 days for each woman. At \$100 a day per woman, this cost the taxpayers \$2,898,200.00. In fact, some women spent much longer on IHP.

| # Days IHP | # women |
|------------|---------|
| 1 - 30 | 32 |
| 31 - 60 | 52 |
| 61 - 90 | 38 |
| 91 - 120 | 34 |
| 121 - 150 | 10 |
| 151 - 180 | 7 |
| 181 - 210 | 16 |
| 211 - 300 | 14 |
| 301 - 400 | 6 |
| 401 - 500 | 5 |
| 501 - 600 | 3 |
| 601 - 700 | 2 |
| 701 - 800 | 3 |
| 801 - 900 | 0 |
| 901 - 1000 | 0 |
| 1020 | 1 |

The situation is worse for those who arrived at NMWCF with less than one year to serve in prison. These women are referred to as “short-timers.” Many of these women are short-timers because they have already served substantial time in jail waiting for their case to be resolved. There were 29 short-timers who served a total of 4393 days of IHP, for an average of 151.5 days per woman. Fifteen of the short-timers, slightly more than half, served more time on IHP than on the prison sentence.

Section 3. Putting the Problem in Context

In 2014, the National Research Council of the National Academies published The Growth of Incarceration in the United States: Exploring Causes and

Consequences.³⁹ There is no question that the United States imprisons more people each year than any other nation. In fact in 2012, the United States had about 25 percent of the world’s prisoners but only 5 percent of the world’s population.⁴⁰ The study observes: “The U.S. rate of incarceration, with nearly 1 of every 100 adults in prison or jail, is 5 to 10 times higher than rates in Western Europe or other democracies.” The incarceration of women has grown even more sharply. One-third of the world’s female prisoners are locked up in the United States.⁴¹

Moreover, the number of women imprisoned in New Mexico has increased sharply since FY 2011, when the high count was 629 inmates.

| | |
|---------|-----|
| FY 2012 | 649 |
| FY 2013 | 661 |
| FY 2014 | 704 |
| FY 2015 | 782 |

The projected high count for FY 2016 is 855.⁴² During this same period of time, the growth rate of the male prison population was much slower. In 2011, the high count of male prisoners was 6,175; in FY 2015, it was 6,558.⁴³

In short, from FY 2011 through FY 2015, the female prison population grew by 20.5%, while the male prison population grew 6.6%.

On the other hand, the overall recidivism rate for FY 2014 was 47%.⁴⁴

There are reasons to think it is even higher for women. For the women released in calendar year 2009, the four year recidivism rate was 67%.⁴⁵ Those who committed drug crimes had the highest rate of recidivism. In addition, women who were supervised were 2.34 times more likely to be incarcerated, probably a reflection of returns to prison for parole violations.⁴⁶

It seems obvious that incarceration is not effective in deterring many from crime. In order to reduce recidivism, New Mexico needs to provide accessible, affordable treatment in the community to help addicts overcome their addiction before they become convicted felons.⁴⁷ In addition, New Mexico needs to provide better community treatment options for the mentally ill.⁴⁸ We can do better than a nineteenth-century solution.

Postscript

Since this investigation began in October 2013, there have been some improvements. For one thing, the number of women whose release on parole has been delayed is declining. The peak number was reached on June 30, 2013, the beginning of FY 2014. At that time there were 62 names on the IHP Breakdown Analysis. By July 15, 2014, the number was only 36 women on IHP. From there it went up and down and up again: 26 in August, 37 in October and 37 in November, all of 2014. In March of 2015, it was down to 31 women whose release was delayed.

In addition, in 2015, the Corrections Department terminated its contract with Corrections Corporation of America. The Department is in the process of moving the women who were housed at NMWCF into two publically-owned prisons, Western New Mexico Correctional Facility in Grants, New Mexico, and Springer Correctional Facility in Springer, New Mexico. Unfortunately, this will not, by itself, end the delays. In March 2015, Springer and Western also had inmates serving in-house parole.

Section 4. Recommendations

1. NMCD should enforce its written policy and require parole planning to begin 210 days before the last day of the prison sentence. In order to do this, the Department may need to hire more caseworkers to work with the women. In FY 2014, one caseworker helped 438 women create parole plans.

2. NMCD's policy should be enforced at privately run prisons as well. Any contract for a prison facility should provide that the Department will not pay for any day a person is in prison after fully serving the imprisonment portion of the sentence. Alternatively, the contract could provide that the contractor must add additional caseworkers when the number of people on in-house parole exceeds 10.

2. The Parole Board should increase the number of hearings for women. It is well documented that women tend to serve shorter sentences.⁴⁹ As a result, the

Parole Board needs to hold more hearings for women than it does for men on a proportionate basis. The Parole Board has included a request for this in its budget for FY 2017.

3. The Parole Board should issue parole certificates within ten business days of the parole hearing. There may be various ways to automate the process. In the long run, this may require adding staff to the Parole Board.

4. Give district judges the discretion to refrain from ordering parole when sentencing an offender who will have less than one year to serve in prison after the offender receives credit for pre-sentence confinement. No one should spend more time in prison on in-house parole than was spent serving the prison sentence.

5. NMCD should pay for the first one or two months of half-way house, residential treatment, and even rent when the inmate cannot afford to pay for it.

6. Increase funds allocated to residential support of parolees, whether in a halfway house or residential treatment center. In the 2015 regular Legislative session, there was a bill that would have mandated the Corrections Department to create halfway houses or transitional residential housing and would have given priority to those serving in-house parole or, as the bill refers to it, “release eligible inmates.” The bill passed both houses of the Legislature with overwhelming support, only to be pocket-vetoed by the Governor. On the other hand, during FY

2015, the Corrections Department increased the money allocated to services for female parolees.

7. The Legislature should re-assess its approach to post-prison supervision. Recent research has shown that some approaches benefit some parolees but not others. As a result, parole is no longer viewed as a “one size fits all” proposition.⁵⁰ Similarly, if the goal is to encourage parolees to re-establish ties in their community, re-incarceration for the balance of the parole period should be applied more sparingly. The Legislature might wish to study whether re-incarcerating parolees increases or decreases the chances of the offender committing a new crime when released without further supervision and by how much. Is this a cost effective approach? In addition, many parolees are on both probation and parole. Perhaps probation, rather than parole, for post-prison supervision would be a better solution. The federal government has had significant success with this approach.

8. Allocate more funding to drug treatment programs in the community. Incarceration does not cure addiction. It is difficult for someone who wants to quit drugs or alcohol to find affordable treatment. However, there are cost-effective treatment programs and they need to be easily available before an individual becomes involved with the law enforcement system.⁵¹ Once criminal charges are filed, diverting the addicted to appropriate drug courts and alcohol courts has proven to be a successful strategy for many people. This is particularly so if the

intervention is structured so that the offender does not have a felony conviction on his or her record.

9. Allocate more funding for treatment for the mentally ill. Incarceration does not cure mental illness. Mental illness affects a substantial portion of New Mexico's population, and yet there are very few facilities that can assist these people. We can certainly do better than provide nineteenth century solutions to twenty-first century problems.

References

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- ¹ Report to the Legislative Finance Committee, “Parole Board, Review of Management and Video Conferencing Readiness,” May 23, 2007 at 1-2. Hereafter, “LFC Parole Board 2007.”
- ² Legislative Finance Committee, Agency Performance Report Card, New Mexico Corrections Department, FY 2014, Fourth Quarter, at 1. Hereafter, LFC Report Card.
- ³ *Id.*, at 2
- ⁴ New Mexico Corrections Department, Re-entry Planning CD 083001, Revised December 29, 2010, pages 14-19.
- ⁵ “LFC Report Card.”
- ⁶ Kristine Denman, Prison Program Utilization and Recidivism among Female Inmates in New Mexico, Executive Summary, New Mexico Statistical Analysis Center, April 2015 at 4.
- ⁷ *Id.* at 5.
- ⁸ New Mexico Corrections Department 2014-2015 [sic] Annual Report. Despite its title, the report covers Fiscal Year 2014. Hereafter, NMCD Annual Report 2014-2015 [sic].
- ⁹ NMSA 1978, § 31-21-10(D) (2009). For sex offenders, the parole period is a minimum of five years and can be as long as the offender’s life. NMSA 1978, §31-31-10.1.
- ¹⁰ NMSA 1978, § 31-21-10(E) (2009).
- ¹¹ Report to the Legislative Finance Committee, “Parole Board, Review of Management and Video Conferencing Readiness,” May 23, 2007 at 1-2.
- ¹² Report to the Legislative Finance Committee, “New Mexico Corrections Department, Reducing Recidivism, Cutting Costs and Improving Public Safety in the Incarceration and Supervision of Adult Offenders,” June 14, 2012, at 20-23.
- ¹³ “Who Pays? The True Cost of Incarceration on Families, Executive Summary,” September 2015, a national community-driven report led by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design.
- ¹⁴ In October 2015, the Corrections Department announced that it would not renew the contract with Corrections Corporation of America and that the women would be transferred to state-owned prisons. As we go to press, the Department is in the process of moving the women into Western New Mexico Correctional Facility or Springer Correctional Facility.
- ¹⁵ NMSA 1978 § 14-2-1 et. seq.
- ¹⁶ LFC Report Card.
- ¹⁷ *Id.* at 1.
- ¹⁸ There was racial/ethnic data for 226 of the women. 60% of the IHP women were Hispanic/white; 24.3% were white; 7.9% were Native American; 5.8% were black; and 1.3% were Hispanic/black. The racial/ethnic heritage of 0.9% of the women was unknown.
- ¹⁹ Presence of Adverse Childhood Experiences & Victimization among New Mexico’s Female Inmate Population, New Mexico Sentencing Commission, June 2013 at 4-5.
- ²⁰ “Prevalence of Adverse Childhood Experiences & Victimization among New Mexico’s Female Inmate Population: Implications for Correctional Programming,” New Mexico Sentencing Commission, June 2013.
- ²¹ Legislative Finance Committee Results First Research Report, “Evidence-Based Behavioral Health Programs to Improve Outcomes for Adults,” September 24, 2014, at 2.
- ²² Thomas J. Cole, “Getting High in Prison,” *The Sunday Albuquerque Journal*, September 6, 2015, at A4
- ²³ Treatment Advocacy Center, “More Mentally Ill Persons Are in Jails and Prisons than Hospitals,” <http://www.tacreports.org/jail-study?tmpl=component&print=1&page=>
- ²⁴ Linda Freeman, Dan Cathey, “Best Practices in Gender Specific Probation and Parole Models and Survey of Women Currently on Supervision in New Mexico,” New Mexico Sentencing Commission, June 2008 at 3-4.
- ²⁵ NMCD Annual Report 2014-2015 [sic] at 37.
- ²⁶ For a more complete discussion, see Dan Cathey, Alex Adams, Chris Miller, “Collateral Consequences in New Mexico: A First Look,” New Mexico Sentencing Commission September 2008.
- ²⁷ LFC Report Card.
- ²⁸ NMSA 1978, §31-18-15(A).

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- ²⁹ NMSA 31-21-10(D). If the person is convicted of a fourth degree felony, the parole period is one year. For all other crimes except sex offenses, the parole period is two years.
- ³⁰ NMSA § 31-31-10.1 the minimum is five years to no more than 20; for some sex offenders, the minimum is five years and the maximum is the rest of the person’s natural life.
- ³¹ NMSA 1978, § 31-20-12.
- ³² NMCD Re-entry Planning CD-083001, revised December 29, 2010, pages 14-19.
- ³³ NMAC § 22.510.2.8(A)(2).
- ³⁴ NMAC 22.510.13.8(C).
- ³⁵ The Santa Fe New Mexican, “31 Female State Inmates Moved,” Sunday, October 5, 2014 at C-2.
- ³⁶ NMSA 1978, § 31-26-12 (2009).
- ³⁷ LFC Report Card.
- ³⁸ NMAC § 22.510.9.8.
- ³⁹ National Research Council. (2014). The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, D.C.: The National Academies Press. (hereafter, The Growth of Incarceration)
- ⁴⁰ The Growth of Incarceration at 2.
- ⁴¹ Zak Cheney-Rice, “One-Third of the World’s Women in Prison Are Locked Up In The USA. All 201,200 of Them,” available at <http://www.informationclearinghouse.info/article39957.htm>.
- ⁴² New Mexico Sentencing Commission Staff, “New Mexico Prison Population Forecast: FY 2016 – FY 2025,” at 3.
- ⁴³ Id.
- ⁴⁴ LFC Corrections Report Card.
- ⁴⁵ Denman, “Prison Program Utilization” at 4.
- ⁴⁶ Id. at 5.
- ⁴⁷ See generally, Legislative Finance Committee Research Report, Evidence Based Behavioral Health Programs to Improve Outcomes for Adults, September 24, 2014.
- ⁴⁸ Id.
- ⁴⁹ Kristine Denman, Linda Freeman, Nona Gronert, New Mexico’s Female Prisoners: Exploring Recent Increases in the Inmate Population: Report in Brief, New Mexico Sentencing Commission, August 2012, at 2, indicating that the average length of time women are incarcerated is 9 to 12 months.
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- ⁵¹ Legislative Finance Committee, Research Report, Evidence-Based Behavioral Health Programs to Improve Outcomes for Adults, LFC Results First, September 24, 2014 at 9-11.